

EXHIBIT 51

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STAR AUTO SALES OF BAYSIDE, INC.
(d/b/a STAR TOYOTA OF BAYSIDE),
STAR AUTO SALES OF QUEENS, LLC
(d/b/a STAR SUBARU), STAR HYUNDAI
LLC (d/b/a STAR HYUNDAI), STAR
NISSAN, INC. (d/b/a STAR NISSAN),
METRO CHRYSLER PLYMOUTH INC. (d/b/a
STAR CHRYSLER JEEP DODGE) STAR AUTO
SALES OF QUEENS COUNTY LLC (d/b/a
STAR FIAT) and STAR AUTO SALES OF
QUEENS VILLAGE LLC (d/b/a STAR
MITSUBISHI),

Plaintiffs,

-against-

VOYNOW, BAYARD, WHYTE and COMPANY
LLP, HUGH WHYTE, and RANDALL
FRANZEN,

Case No.
18-cv-05775
(ERK) (TAM)

Defendants.
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November 9, 2022
11:00 a.m.

Remote Deposition of CODY McCABE, taken
by Plaintiffs, pursuant to Notice, held via Zoom
before Lisa Hiesiger, a Shorthand Reporter and
Notary Public within and for the State of New
York.

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A P P E A R A N C E S :

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Also Present:

JACQUELINE CUTILLO

ROBERT SEIBEL

STEVE RAMBAM

RANDY FRANZEN

HUGH WHYTE

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3 IT IS HEREBY STIPULATED AND AGREED, by and
4 among counsel for the respective parties hereto,
5 that the filing, sealing and certification of the
6 within deposition shall be and the same are
7 hereby waived;

8 IT IS FURTHER STIPULATED AND AGREED that
9 all objections, except as to form of the
10 question, shall be reserved to the time of the
11 trial;

12 IT IS FURTHER STIPULATED AND AGREED that
13 the within deposition may be signed before any
14 Notary Public with the same force and effect as
15 if signed and sworn to before the Court.
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2 specific service directors as to each work order.

3 Q. Then would you in the interim report,
4 would that be included as to why a particular
5 customer hadn't paid?

6 MS. FITZGERALD: Objection.

7 A. I don't recall.

8 Q. Some explanation?

9 A. I would think so, I just don't
10 recall.

11 Q. Can you contrast or compare and
12 contrast the work that you did on the tax side of
13 things and then contrast that with the accounting
14 and reporting services that we were just talking
15 about? Like what's the difference between the
16 tax aspect of things that you were doing and
17 these interim visits that you would do like we
18 just talked about at Koepfel?

19 MS. FITZGERALD: Objection. Object
20 to form.

21 A. To the best of my recollection, the
22 tax visits were to finalize the tax information
23 for the return and then the interim visits were
24 just to get kind of almost a tax planning for the
25 tax planning, to kind of just meet in the middle

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2 of the year and just make sure everything was
3 working.

4 Q. Was the idea at least getting from
5 the old work orders that you were describing, one
6 of the purposes behind the accounting and
7 reporting services is to identify some type of
8 possible irregularities?

9 MS. FITZGERALD: Objection.

10 Q. You can answer.

11 A. I think what you're referring to is
12 different than tax information. It's a separate
13 instance where you're actually contracting to do
14 that.

15 Q. I understand that, but I mean you're
16 identifying old work orders, right, in the
17 instance with Koeppel you're identifying old work
18 orders, money that hadn't been paid that you
19 believe should have been paid to Koeppel, right?

20 A. I believe so, yes.

21 Q. So I mean that really doesn't have
22 anything to do with taxes at all because the
23 money hasn't been paid, if it gets paid, it gets
24 paid, and that will get generated as revenue,
25 right, but it's identifying some money that

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Q. So to the extent you were having discussions with anyone at Koeppel, whether it was a service manager or a controller about these open repair orders, is it fair to say that those discussions were centered upon whether or not there was income out there that could be picked up?

A. Correct.

MR. LABUDA: Objection to form.

You can answer.

Q. I think you specifically were asked about digging deeper when you would -- do you recall that digging deeper when you were looking at these open repair orders at Koeppel?

A. Yeah.

Q. Were you digging deeper to find out if there was unreported income?

A. Not unreported, I guess to figure out why work orders were open.

Q. Whether or not income should be written off, right?

A. Correct.

Q. But that was your focus when you were looking at those open repair orders at Koeppel?

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2 books and records, correct?

3 A. Correct.

4 MR. LABUDA: Objection.

5 Q. Is Star responsible for the accuracy
6 of its own books and records?

7 A. Correct.

8 Q. Other than your general recollection
9 that you have of working on fixed assets, is it
10 fair to say you don't have any specific knowledge
11 as to what any other Voynow employee worked on at
12 Star?

13 A. Specifically, no, I don't recall.

14 Q. So you don't know, is it fair to say
15 that you don't know whether or not any other
16 Voynow employee questioned any Star employee
17 about any specific schedule?

18 A. I don't specifically recall, but I'm
19 sure there were conversations.

20 Q. Is it fair to say that Voynow was not
21 simply taking numbers that were on Star's
22 schedules and plugging them into a tax return
23 without raising questions if questions were
24 warranted?

25 A. Yes, that's correct.

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Q. You were asked questions about whether or not this document was a typical interim report. Do you recall that questioning?

A. Yes.

Q. If I understand your testimony, you told me you only went on one visit and that was to Koepfel as an interim visit, correct?

A. Correct.

Q. Is it fair to say that you don't have enough knowledge to know what is and what is not a typical interim report since you only went on one visit?

A. That's fair, correct.

MR. LABUDA: Objection.

You can answer.

Q. You also testified that you understood that the purpose of an interim report was to bring certain items to the attention of management, do you recall that?

A. Correct.

Q. One of the things you said was an interim report could let a manager or controller know about customers who owe money, do you recall that?

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A. Yes.

Q. Would the reason for that be so that the manager could make a determination whether that particular customer amount was collectible or not?

A. That's correct.

Q. Then the manager, because whether or not it was collectible or not, could impact the client's income?

A. Correct.

Q. Because if it wasn't collectible, it would then be written off, right?

A. That's correct.

Q. So that would be the reason why as far as you know, an interim visit could let a manager know about items that may be outstanding so that they could decide whether or not it could be collectible?

MR. LABUDA: Objection.

You can answer.

A. That's correct.

Q. How much of what you do currently is tax work?

A. Probably 80 percent of what I do.